

## Employment: Immigration

### Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019

#### Most relevant to

- Irish employers
- Cross-border employers
- Cross-border employees
- Insolvency practitioners



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There are two separate aspects to Part 14 of the Act: non-refoulement (sections 95 and 96) and the British Irish Visa Scheme (section 97).

Non-refoulement is an international law principle which prohibits the expulsion, deportation, return or extradition of a refugee or applicant for international protection to a country where there is a risk that his or her life or freedom would be threatened for discriminatory reasons. The principle of non-refoulement has been legislated in Ireland in the Refugee Act 1996 and in the International Protection Act 2015.

An Irish High Court case in March 2018 struck down the references to the prohibition of refoulement in the Immigration Act 1999 and the Immigration Act 2003. This has created a legislative gap where there is no legislative basis for the Minister to consider the principle of non-refoulement in making a deportation order and, similarly, there is no legal basis for an immigration officer or a member of An Garda Síochána (the Irish police force) to undertake an assessment of refoulement risk where a person is refused leave to land or enter Ireland.

Separately, under the Common Travel Area, the British Irish Visa Scheme, which was established in 2014, allows for mutual recognition of short-stay visas between the UK and Ireland. This currently applies for Chinese and Indian nationals allowing those nationals to travel between Ireland and the UK on a single visa without additional immigration requirements. In order to ensure the British Irish Visa Scheme continues in a no-deal Brexit scenario,

additional security controls (the taking of fingerprints) are required to ensure the integrity of the Irish immigration system.

#### What does the Act say?

The purpose of sections 95 and 96 of the Act is to amend the Immigration Act 1999 and the Immigration Act 2003 so that these Acts are in full compliance with the principle of non-refoulement. In addition, section 95 confirms that if consideration was given to non-refoulement in a deportation order since 31 December 2016, the deportation order will still be valid.

The necessity of these non-refoulement amendments in the case of a no-deal Brexit and therefore the inclusion of these amendments in this Act rather than stand-alone legislation is not entirely clear. However, it may be due to the fact that Ireland and the UK operate a Common Travel Area. They have both opted out of the EU's Asylum Procedures Directive and the Schengen Area, which provide that Member States who have opted in are required to act in full compliance of the principle of non-refoulement. Part 14 of the Act will ensure that Ireland fulfils its international obligations in relation to the principle of non-refoulement.

The purpose of section 97 is to amend the Immigration Act 2004 to provide a legal basis for the taking and maintenance of fingerprints of a person for the purpose of their application for an Irish visa or an Irish transit visa. This is to ensure the continuance of the British-Irish Visa Scheme under the Common Travel Area and the integrity of the Irish immigration system.